

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHRISTINE CADY,)	
)	
Plaintiff,)	
)	Cause No: 4:12-CV-00186
vs.)	
)	Circuit Court No. 11AB-CC00317
DVA RENAL HEALTHCARE, INC. D/B/A)	Franklin County
WASHINGTON SQUARE DIALYSIS,)	
)	DEFENDANT HEREBY REQUESTS
Defendant.)	A JURY TRIAL

NOTICE OF REMOVAL

COMES NOW Defendant DVA Renal Healthcare, Inc. d/b/a Washington Square Dialysis, by and through counsel, and files this Notice of Removal of the above-entitled action to the United States District Court for the Eastern District of Missouri, Eastern Division pursuant to 28 U.S.C. § 1332, and in support thereof states as follows:

1. That the above-entitled action, now pending in the Circuit Court of Franklin County, State of Missouri, is a civil action at law brought by the above-named Plaintiff against Defendant to recover damages.
2. Removal in this matter is timely in that Plaintiff filed her Petition on or about December 19, 2011. Defendant was served on January 4, 2012.
3. As required by 28 U.S.C. § 1446(b), the Defendant's Notice of Removal is filed in this Court within thirty days after the receipt by Defendant of a copy of Plaintiff's Petition in said action, setting forth the claim for relief upon which said action is based, which was served upon the Defendant.

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1332, because this is a civil action in which the amount in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of costs and interest, and is between citizens of different states.
5. The controversy in said action is wholly between citizens of different states: Plaintiff Christine Cady, at the time of the commencement of said action and ever since has been and still is a citizen and resident of the State of Missouri.
6. Defendant DVA Renal Healthcare, Inc. d/b/a Washington Square Dialysis, is incorporated in the State of Tennessee and has its principal place of business in the State of Colorado. *See* Exhibit 1. Defendant DVA Renal Healthcare, Inc. d/b/a Washington Square Dialysis, therefore, is a citizen of the States of Tennessee and Colorado for purposes of 28 U.S.C. § 1332.
7. The amount in controversy exceeds \$75,000.00. While Plaintiffs' Petition does not allege a specific amount of damages, stating instead that Plaintiff seeks such sums as a jury determines to be fair and reasonable, the amount in controversy, nevertheless, exceeds \$75,000.00.
8. Prior to the filing of suit, Plaintiff made a demand on Defendant of two hundred ninety-nine thousand dollars (\$299,000.00). This is Defendant's first indication that Plaintiff seeks damages in excess of \$75,000.00.
9. A review of Plaintiff's decedent's medical records received to date reveals Plaintiff incurred in excess of \$35,000.00 in medical expenses purportedly related to the incident at issue, which allegedly culminated in Plaintiff's decedent's death.
10. Finally, plaintiff seeks an unspecified amount for loss of consortium suffered by Plaintiff.

11. In the absence of any specified amount of damages in a Petition, the courts look toward a number of factors, including the settlement demand, in determining whether the jurisdictional amount has been satisfied. *See generally Ward v. Sailormen, Inc.*, No. 4:06CV1814 JCH, 2007 WL 1040934 at *2 (E.D. Mo. Apr. 3, 2007) (holding, in a case where the complaint specified no amount in controversy, that the amount in controversy was satisfied upon evidence of seriousness and permanency of injuries, medical expenses in excess of \$20,000.00, and a settlement demand in the amount of \$100,000.00).
12. Furthermore, Plaintiff's Petition also sets forth allegations on the nature of Plaintiff's decedent's injuries, stating he suffered "severe, permanent and progressive injuries including, but not limited to, bilateral hemorrhagic brain contusions, a subarachnoid hemorrhage, and mental and physical pain, anguish and distress."
13. Where the plaintiff has alleged serious injuries, Missouri federal courts have concluded the amount in controversy requirement has been met. *See Hall v. Vlahoulis*, No. 06-6107-CV-SJFJG, 2007 WL 433266 at *1 (W.D. Mo. Feb. 5, 2007) (holding that evidence of amount in controversy "may include plaintiff's representations, 'including settlement offers by plaintiff exceeding the jurisdictional amount, the plaintiff's refusal to stipulate that she would not demand more than the jurisdictional amount, or an extensive list of serious and disabling injuries suffered by the plaintiff.'").
14. In light of Plaintiff's demand seeking \$299,000.00, the total medical and funerary expenses determined to date, the potential value of Plaintiff's loss of consortium claim, and the allegations concerning the serious and disabling nature of Plaintiff's decedent's injuries, the amount in controversy in the present matter exceeds \$75,000.00.

15. The Circuit Court of Franklin County, State of Missouri, is located within the United States District Court for the Eastern District of Missouri, Eastern Division. Thus, venue is proper in this court because it is the "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).
16. A copy of the Plaintiff's Petition in said action, setting forth the claim for relief upon which said action is based, which Petition was served upon Defendant with a copy of the summons, in attached hereto. Additionally, Defendant attaches a copy of all process, pleadings, and orders served upon Defendant in said action.

WHEREFORE, Defendant DVA Renal Healthcare, Inc. d/b/a Washington Square Dialysis, prays this Honorable Court accept jurisdiction of said action.

/s/William S. Thomas

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I hereby certify that a copy of the foregoing filed electronically with the Clerk of the Court this 3rd day of February 2012 to be served by operation of the Court's electronic filing system upon the following: Mr. Mark T. Kempton, Attorney for Plaintiff, 114 East 5th Street, P.O. Box 815, Sedalia, Missouri 65302-0815, email: mark@kemptonrussell.com.

/s/William S. Thomas